IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 403 of 2000.

Judgement reserved on: 30.11.2007

Date of decision: 3.12.2007.

State of H.P. **…….Appellant**

Vs.

Chander Prakash **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. M.L. Chauhan, Additional Advocate General.

For the Respondent : Mr. Ajay Sharma, Advocate.

Kuldip Singh, Judge.

The State has filed this appeal against judgment dated 16.12.1999 passed by learned Judicial Magistrate Ist Class-I, Dharamshala in Crl. Case No.14-II/97, acquitting the respondent under Section 353 IPC.

2. The prosecution case in brief is that the complainant PW-5 Atma Ram is an employee of H.P. State Electricity Board (for short 'Board') and on 22.4.1996 he was sent on official duty to H.P. Administrative Tribunal at Dharamshala (for short Tribunal) in case O.A. No.804D/95 titled Smt. Karam Dei vs. HPSEB. He

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

attended the Tribunal for assisting the standing counsel of the Board and when complainant was standing in the premises of the Tribunal, the respondent (husband of Karam Dei) came there and gave him a push and started abusing without asking anything. He caught the complainant from arms and started shouting upon him. The usher of the Tribunal saved him from the respondent. The matter was reported to Standing counsel of the Board who sent the complainant to Police Station for lodging an FIR. The complainant submitted a written complaint at Police Station, Dharamshala and on that basis FIR was registered against the respondent. On completion of investigation challan was put up against respondent, notice of accusation was put to respondent under Section 353 IPC, to which he pleaded not guilty and claimed trial. The prosecution has examined 8 witnesses. Statement of respondent was recorded under Section 313 Cr.P.C., the respondent pleaded his innocence. He examined two witnesses in defence. The learned trial Magistrate acquitted the respondent and therefore, State has filed the appeal.

3. I have heard the learned additional Advocate General for the State and Mr. Ajay Sharma, learned counsel for the respondent and gone through the record. On behalf of the State, it has been submitted that prosecution has proved the case against the respondent. The learned trial Magistrate has misconstrued, misinterpreted the evidence. The respondent has committed offence under Section 353 IPC which has been fully proved on record. The learned counsel for the respondent has supported the reasoning

given by the learned trial Magistrate while making submissions on behalf of the respondent.

4. As per Section 353 IPC whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both. Therefore the most important ingredient of Section 353 IPC is that assault or criminal force should be against the public servant in the execution of his duty as public servant or with intent to prevent him from discharging his duty as public servant.

5. Complainant PW-5 Atma Ram has stated that on 22.4.1996, he had gone on duty to instruct the counsel for the Board in a case filed by Smt. Karam Dei before Tribunal at Dharamshala. Mr. K.S. Banyal was the Standing counsel of the Board. He met him at about 10.15 a.m., who told him to wait out side the Court. He was standing out side the door of the Court premises, respondent came out from the Court room and pushed him as well as abused him. He caught hold the complainant with arms and again pushed him. He was rescued by usher who was standing at the door. Mr. K.S. Banyal who was sitting in the Court saw the incident, he came out and asked the complainant to give in writing. The complainant has not stated

that respondent assaulted or used criminal force against complainant in the execution of his official duty as public servant or with intent to prevent or deter him from discharging his duty as public servant. The complainant has simply stated that the respondent came out from the Court premises, pushed and abused him.

6. The complainant has stated that he was rescued by Court usher and by Mr. K.S. Banyal, both of them have also seen the occurrence. PW-3 Jai Singh has stated that on 22.4.1996, he was standing on duty at the door of the Court and complainant was also standing out side the Court. The respondent came out side the Court and pushed complainant Atma Ram and abused him. Mr. Banyal was also standing there. This witness has not stated a word that when respondent pushed and abused complainant at that time the complainant was discharging duty as public servant. He has also not stated that he came to rescue the complainant and thus contradicted the statement of complainant on this point.

7. PW-4 K.S. Banyal has stated that he remained legal advisor of the Board from 8.4.1994 to 4.5. 1998. In April, 1996, complainant came to brief him in case titled Karam Dei vs. H.P.S.E.B. The case was called at 11.15 a.m. or 11.30 a.m. The complainant briefed him and the case was adjourned for the next date, but he asked him to wait out side. He was sitting in front row of the Court, he heard the noise and went out side and saw that respondent was exchanging hot words with complainant, some manhandling also took place. This witness has also not stated that respondent obstructed

manhandled the complainant while he was discharging public duty and prevented him from execution of his public duty.

8. In order to bring home the guilt under Section 353 IPC the most important requirement is that assault or criminal force is used against the public servant while he was executing his duty as public servant. In this case the prosecution has failed to prove the ingredients of Section 353 IPC. PW-1 has placed on record certificate Ex.PW-1/A certifying that Atma Ram was deputed on Board duty to attend the hearing in case titled Smt. Karam Dei Vs. HPSEB fixed on 22/4/1996 before the circuit bench of the Tribunal at Dharamshala. PW-1 has stated that he is posted in the branch as attached officer to S.E. Generation, Circle Palampur. He has not stated that he was the controlling officer of complainant on 22.4.1996. In his statement he has stated that he deputed complainant to attend the hearing on 22.4.1996 but in certificate Ex.PW-1/A there is nothing to show that complainant was deputed by PW-1 to attend the hearing. It appears on 22.4.1996 the complainant was working in the office of Superintending Engineer, Generation Circle, Palampur, nothing has been placed on record that Superintending Engineer, Generation Circle, Palampur deputed complainant for attending the hearing of the case on 22.4.1996. It is not the case of the complainant that in normal course it was the duty of the complainant to instruct the Board counsel and attend hearing in the Court cases including the case of Smt. Karam Dei. The prosecution has failed to prove that on 22.4.1996 complainant was discharging the duty of public servant

when he was present in the premises of the Tribunal. The learned Magistrate has appreciated the material on record and has drawn correct inference. No case has been made out for interference. Hence, appeal dismissed.

(Kuldip Singh)
Judge.

December 3, 2007
(sks)